

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RONALD KLINGENSMITH
P. O. Box 1913
Escondido, CA 92033

CPA Certificate No. 50448,

Respondent.

Case No. AC-2010-36


OAH No. 2011051174

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 27, 2012.

It is so ORDERED September 27, 2012.


FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
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Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

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12 In the Matter of the Accusation Against:

13 RONALD KLINGENSMITH
P. O. Box 1913
14 Escondido, CA 92033

15 CPA Certificate No. 50448,

16 Respondent.

Case No. AC-2010-36

OAH No. 2011051174

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibility of the California Board of Accountancy (CBA or Board) of the
20 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender
21 of License and Order which will be submitted to the CBA for approval and adoption as the final
22 disposition of the Accusation.

23 **PARTIES**

24 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
25 Accountancy. She brought this action solely in her official capacity and is represented in this
26 matter by Kamala D. Harris, Attorney General of the State of California, by Ron Espinoza,
27 Deputy Attorney General.

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2. Ronald Klingensmith (Respondent) is represented in this proceeding by attorney Carl Skaja, Esq., whose address is: Skaja, Daniels, Lister & Permito, LLP, 960 Canterbury Place, Ste. 110, Escondido, CA 92025.

3. On or about May 26, 1988, the California Board of Accountancy issued Certified Public Accountant (CPA) Certificate No. 50448 to Respondent Ronald Klingensmith. The license was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2010-36 and expired on May 31, 2012, and has not been renewed.

JURISDICTION

4. Accusation No. AC-2010-36 was filed before the California Board of Accountancy, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 5, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2010-36 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2010-36. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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ORDER

IT IS HEREBY ORDERED that CPA Certificate No. 50448 issued to Respondent Ronald Klingensmith is surrendered and accepted by the California Board of Accountancy.

1. The surrender of Respondent's CPA Certificate and the acceptance of the surrendered license by the CBA shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the California Board of Accountancy.

2. Respondent shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the CBA's Decision and Order.

3. Respondent shall cause to be delivered to the CBA his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. Respondent shall cease practicing as or under the accountancy firm of Ron Klingensmith & Associates, CPAs, Inc., and shall cause to be removed from the Internet its website "Ron Klingensmith & Associates, CPA" (located at "http://www.klingensmithcpa.com") as of the effective date of the Decision and Order.

5. If Respondent ever files an application for licensure or a petition for reinstatement with the CBA, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. AC-2010-36 shall be deemed to be true, correct and admitted by Respondent when the CBA determines whether to grant or deny the petition.

6. Respondent shall not apply for licensure or petition for reinstatement to the CBA for one year from the effective date of the Decision and Order.

7. Respondent fully understands and agrees that as a condition precedent to the restoration of any license to him from the CBA, he shall submit proof to the CBA that he has responded to and produced documents and information within his possession, custody or control as requested by the Board's subpoena issued to him on June 8, 2012, in Case No. A-2012-381; and the Board's inquiry letter to him dated June 15, 2012, in Case No. A-2012-1819.

1 8. Respondent shall pay the CBA part of its costs of investigation and enforcement of
2 this matter in the amount of \$10,000.00 within thirty (30) days after the effective date of the
3 Decision and Order. Respondent shall pay the CBA its remaining costs of investigation and
4 enforcement of this matter in the amount of \$14,996.64 prior to the issuance of a new or
5 reinstated license to Respondent.

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7 ACCEPTANCE

8 I have carefully read the above Stipulated Surrender of License and Order and have fully
9 discussed it with my attorney, Carl Skaja, Esq. I understand the stipulation and the effect it will
10 have on my CPA Certificate. I enter into this Stipulated Surrender of License and Order
11 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
12 California Board of Accountancy.

13
14 DATED: 8/14/12

Ronald Klingensmith
15 RONALD KLINGENSMITH
Respondent

16 I have read and fully discussed with Respondent Ronald Klingensmith the terms and
17 conditions and other matters contained in this Stipulated Surrender of License and Order. I
18 approve its form and content.

19 DATED: 8-14-12

Carl Skaja
20 CARL SKAJA, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the California Board of Accountancy of the Department of Consumer
Affairs.

Dated: 9-14-12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

SD2010702646
Stipulation.rtf

Exhibit A

Accusation No. AC-2010-36

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
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Case No. AC-2010-36

13 RONALD KLINGENSMITH
P. O. Box 1913
14 Escondido, CA 92033
15 CPA Certificate No. 50448,

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
22 2. On or about May 26, 1988, the California Board of Accountancy issued Certified
23 Public Accountant (CPA) Certificate Number 50448 to Ronald Klingensmith (Respondent). The
24 CPA license was in full force and effect at all times relevant to the charges brought herein, and
25 will expire on May 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 5100 states:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

". . . .

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

". . . .

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

". . . ."

5. California Code of Regulations, Title 16, section 52, states:

"(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

"(b) A licensee shall respond to any subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer within 30 days and in accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

"(c) A licensee shall appear in person upon written notice or subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer.

"(d) A licensee shall provide true and accurate information and responses to questions, subpoenas, interrogatories or other requests for information or documents and not take any action to obstruct any Board inquiry, investigation, hearing or proceeding."

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6. California Probate Code section 16000 states:

"On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to this division."

7. California Probate Code section 16002, subdivision (a), states:

"The trustee has a duty to administer the trust solely in the interest of the beneficiaries."

8. California Probate Code section 16060 states:

"The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration."

9. California Probate Code section 16061 states:

"Except as provided in Section 16069, on reasonable request by a beneficiary, the trustee shall report to the beneficiary by providing requested information to the beneficiary relating to the administration of the trust relevant to the beneficiary's interest."

10. California Probate Code section 16062, subdivision (a), states:

"Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustee, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed."

COST RECOVERY

11. Section 5107, subdivision (a), of the Code states:

"The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Breach of Fiduciary Responsibility)

3 12. Respondent is subject to disciplinary action under Code section 5100, subdivision (i),
4 for breach of fiduciary responsibility in administering the Carpenter Charitable Remainder Trust
5 as its trustee. The circumstances are as follows:

6 A. On or about November 10, 1997, Respondent Ronald Klingensmith accepted and
7 became the sole trustee for the Carpenter Charitable Remainder Trust. The Trustors of the trust
8 are F.C. and N.C. Under the terms of the trust, the Trustors are to receive a percentage of the fair
9 market value of the trust, to be paid in equal quarterly installments over the year. For the year
10 ending 2008, the Trustors did not receive their last two quarterly income distributions from the
11 trust. In addition, as of March 2009, the Trustors had not received their annual accounting of the
12 trust in over two years. For the years 2007 and 2008, the Trustors were also not provided their
13 Schedule K-1s, which reports income distributions from the trust for tax purposes.

14 SECOND CAUSE FOR DISCIPLINE

15 (Failure to Respond to Board Inquiry)

16 13. Respondent is subject to disciplinary action under Code section 5100, subdivision (g),
17 in conjunction with California Code of Regulations, Title 16, section 52, subdivision (a), for
18 failing to respond to the Board's inquiry regarding administration of the Carpenter Charitable
19 Remainder Trust. The circumstances are as follows:

20 A. On or about April 7, 2009, the Board sent Respondent an inquiry letter regarding the
21 allegations set forth in paragraph 12A above, which are hereby incorporated by reference. The
22 letter requested, *inter alia*, that Respondent provide a copy of the most recent trust accounting he
23 had prepared, a copy of the most recent tax return filed for the trust, an explanation as to why
24 distributions had not been made as required by the trust, and explanation as to why a trust
25 accounting had not been provided to F.C. for 2007, within 30 days. No response was received
26 from Respondent.

27 B. On or about June 15, 2009, the Board faxed the April 7, 2009 inquiry letter to
28 Respondent's place of business and requested that he respond to it. On this same date, the

1 investigator for the Board also called Respondent at his work and left his name and number with
2 Respondent's secretary. No response was received by Respondent.

3 C. On or about September 22, 2009, the Board sent Respondent another letter, enclosing
4 the April 7, 2009 letter, and again requesting a response to it. No response was received by
5 Respondent.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Failure to Respond to Board Subpoena)**

8 14. Respondent is subject to disciplinary action under Code section 5100, subdivision (g),
9 in conjunction with California Code of Regulations, Title 16, section 52, subdivision (b), for
10 failing to respond to the Board's subpoena regarding administration of the Carpenter Charitable
11 Remainder Trust. The circumstances are as follows:

12 A. On or about October 29, 2009, the Board issued a subpoena to Respondent requesting
13 documentation and information regarding the allegations set forth in paragraph 12A above, which
14 are hereby incorporated by reference. The subpoena ordered, *inter alia*, that Respondent provide
15 a copy of the most recent trust accounting he had prepared, a copy of the most recent tax return
16 prepared for the trust, an explanation as to why distributions had not been made as required by the
17 trust, and explanation as to why a trust accounting had not been provided to F.C. for the 2007
18 calendar year. No response was received from Respondent.

19
20 **PRAYER**

21 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the California Board of Accountancy issue a decision:

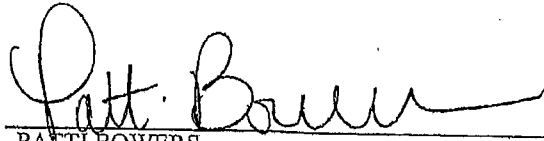
23 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
24 Accountant Certificate Number 50448 issued to Ronald Klingensmith;

25 2. Ordering Ronald Klingensmith to pay the California Board of Accountancy the
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 5107;

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1 3. Taking such other and further action as deemed necessary and proper.
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4 DATED: MARCH 28, 2011
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PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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